In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 462

BRANKO KARADZOLE, CONSUL GENERAL OF THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA, AND ROBERT W. WARE, UNITED STATES MARSHAL, PETITIONERS

v.

ANDRIJA ARTUKOVIC

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

On November 18, 1957, the Solicitor General was advised by the Court of the pendency of the petition for a writ of certiorari in this case and invited to express the views of the Government. Because of the character of the issues presented, the views of the Department of State were requested. These are set forth in the annexed memorandum (Appendix, *infra,* pp. 6–10), and represent the position of the Government.

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In brief, it is our position that the cause should have been allowed to proceed to hearing under 18 U. S. C. 3184, which provides as follows:

> Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any commissioner authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

This hearing has not yet been held. In 1951, the Consul General of the Republic of Yugoslavia filed

with the United States Commissioner at Los Angeles a formal request that an order issue for the extradition of respondent on the ground that he had been charged with murder in Yugoslavia (R. 405–463). Annexed to the complaint as amended was a copy of the indictment returned against respondent in Yugoslavia (R. 463–503), including an explanation thereof by the Yugoslav County Public Prosecutor (R. 503–522). Respondent was taken into the custody of the United States Marshal under a warrant issued by the Commissioner under 18 U. S. C. 3184. Before a hearing under Section 3184, respondent filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of California challenging the legality of his detention on the ground that there was no extradition treaty in effect between the United States and Yugoslavia and that the extradition complaint sought the return of respondent on the basis of political offenses which were not the subject of extradition (R. 22–24). The District Court ordered respondent's release on the ground that the extradition treaty of 1902 between the United States and Serbia was no longer in effect (*Artukovic* v. *Boyle*, 107 F. Supp. 11), but this was reversed on appeal. *Ivancevic* v. *Artukovic*, 211 F. 2d 565 (C. A. 9), certiorari denied, 348 U. S. 818. Thereafter, further hearings were held on the second ground alleged in the petition for habeas corpus, *i. e.*, that the extradition of respondent was sought on the basis of political offenses which were not the subject of extra-

dition under the treaty with Serbia, Article VI of which provided in pertinent part as follows:

> A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character.

The District Court noted that the cause came before it prior to any hearing by a committing magistrate and that its function was not that of a committing magistrate under 18 U. S. C. 3184. It ruled that, for this reason, it could not consider that section of the treaty which provides that one shall not be surrendered "if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character" (Pet. App. 1a–2a). The court considered the case as "confined to the limited and narrow question as to whether or not the Complaint states an extraditable offense under the treaty" (Pet. App. 1a). On the basis of the extradition complaint and the indictment and certain facts of which the court took judicial notice as to the political situation in Yugoslavia at the time of the offenses alleged, the District Court ruled that all the offenses charged, without differentiation, were of a political character and therefore not subject to extradition under Article VI of the treaty (Pet. App. 1a–4a; 140 F. Supp. 245). Accordingly, it again ordered the release of respondent. The Court of Appeals af-

firmed the order of the District Court, similarly holding that all the offenses charged were of a political character (Pet. App. B, 4a–17a; 247 F. 2d 198).

As appears from the annexed memorandum (App., *infra*, p. 8), the Department of State "is of the opinion that no valid reason exists for not allowing an extradition hearing to take place in this case," since, on the basis of the matters thus far adduced, the Department of State "cannot reach the conclusion that all of the acts alleged by the Yugoslav Government to have been committed by Artukovic are necessarily of a 'political character', as the words 'political character' are used in Article VI of the Extradition Treaty in effect between the United States and Yugoslavia." It is therefore the view of the Government that the petition for a writ of certiorari should be granted and the cause remanded to the District Court with directions to discharge the writ of habeas corpus and remand respondent to the custody of the United States Marshal, so that a hearing can be held under 18 U. S. C. 3184, *supra*, p. 2. At that hearing, evidence may be adduced to afford a basis for determining pertinent issues under the treaty and laws of the United States, including evidence from which it may be determined whether or not all of the acts alleged to have been committed by respondent constitute crimes of a political character.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

JANUARY 1958.

APPENDIX

DEPARTMENT OF STATE
WASHINGTON, *December 11, 1957.*

MEMORANDUM FOR THE SUPREME COURT

VIEWS OF THE DEPARTMENT OF STATE

Subject: *Branko Karadzole, Consul General of the Federal People's Republic of Yugoslavia, and Robert W. Ware, United States Marshal,* v. *Andrija Artukovic.*

The Department of State has been advised by the Department of Justice of the pendency on petition for a writ of certiorari of the above entitled cause. The Department of Justice has asked the Department of State whether it desires to submit views concerning the case.

The Department of State understands that there has not yet been an extradition hearing "to the end that the evidence of criminality may be heard and considered", as provided in 18 U. S. Code, Section 3184, and that the issues considered thus far have been raised in Habeas Corpus proceedings. By 18 U. S. Code, Section 3184, it is provided:

> Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any commissioner authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having

committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made. (June 25, 1948, ch. 645, § 1, 62 Stat. 822.)

The United States District Court for the Southern District of California, in *Artukovic* v. *Boyle,* set forth at page 537 of the transcript of the record, and the United States Court of Appeals for the Ninth Circuit, in *Karadzole* v. *Artukovic,* affirming *Artukovic* v. *Boyle,* set forth at page 552 of the transcript of the record, have held that Artukovic should be released and that no extradition hearing should be held on the ground that the offenses alleged by the Yugoslav Government to have been committed by Artukovic were all, without differentiation, of a "political character", as the words "political character" are used in Article VI of the Extradition Treaty in effect between the United States and Yugoslavia (32 Stat. 1890).

After giving careful consideration to the amended extradition complaint and the indictment, to the

opinions of the District Court and Circuit Court of Appeals and to petitioner's brief supporting the petition for a writ of certiorari, the brief in opposition to the petition for a writ of certiorari, and the petitioner's reply to the brief in opposition, the Department of State is of the opinion that no valid reason exists for not allowing an extradition hearing to take place in this case, as provided in 18 U. S. Code, Section 3184, since, on the basis of the above-listed documents and the materials contained therein, the Department of State cannot reach the conclusion that all of the acts alleged by the Yugoslav Government to have been committed by Artukovic are necessarily of a "political character", as the words "political character" are used in Article VI of the Extradition Treaty in effect between the United States and Yugoslavia.

The Department of State is of the view that the offense of murder, even though committed solely or predominantly with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, is none the less "murder" within the meaning of the Extradition Treaty here involved, and is not thereby rendered an offense of a "political character" within the meaning of Article VI of the above-mentioned treaty. It appears from an examination of the complaint and the indictment that it is possible that some of the offenses therein alleged to have been committed by Artukovic may have been committed solely or predominantly with such intent. It is true that the Court of Appeals said: "The District Court properly took judicial notice of the fact that * * * various factions representing different theories of government were struggling for power during this period in Croatia." Without purporting wholly to define offenses of a "political character", it may be stated that murder

directly related to a struggle for power might well be an offense of a "political character". Even if the fact of which the District Court took judicial notice be correct, it does not appear on the face of the pleadings that all of the offenses which Artukovic is therein alleged to have committed were necessarily connected with such struggle for power.

There is also a suggestion in the indictment that the acts of the defendant constituted "war crimes". Even though this might be so, it is the opinion of the Department that some of the murders alleged to have been committed might constitute "murder" within the terms of the Extradition Treaty here involved, under the circumstances alleged, particularly in the absence of any suggestion of tactical or strategic considerations motivating each of the alleged crimes.

In making this statement the Department of State does not intend thereby to indicate whether the Secretary of State would or would not deliver Artukovic to an authorized agent of the Yugoslav Government, pursuant to 18 U. S. Code, Section 3186, if there were to be an extradition hearing and if the Extradition Magistrate were to certify the record to the Secretary of State, as provided in 18 U. S. Code, Section 3184.

The Department of State would like to make known its understanding that, if there were to be an extradition hearing in the case, the following would almost certainly be some, but not necessarily all, of the additional issues to be considered by the Extradition Magistrate or subsequently by the Secretary of State, or by both:

(1) Whether or not sufficient and adequate evidence under the treaty and the laws of the United States has been adduced by the Yugoslav Government to establish the commission of any of the crimes alleged and Artukovic's connection therewith; and

(2) Whether or not the requisition for Artukovic's surrender has, in fact, been made with a view to try or punish him for an offense of a political character. (It is intended to distinguish this issue from the issue of whether or not a particular offense in respect of which Artukovic's surrender is demanded be of a political character.)

The Department of State, therefore, is of the view that a writ of certiorari should be granted and that the Supreme Court should reverse the decision of the lower courts so that:

(1) An extradition hearing in accordance with the provisions of 18 U. S. Code, Section 3184, may take place;

(2) Evidence may be adduced at such hearing which may afford a basis for determining whether or not all of the acts alleged to have been committed by Artukovic constitute crimes of a "political character"; and

(3) Any other pertinent issues under the treaty and laws of the United States may be considered.

For the Secretary of State:

(Signed) Loftus Becker,
(Typed) LOFTUS BECKER,
The Legal Adviser.